

**ESTATES AND TO GUARDIANSHIPS, SUBSTITUTES FOR
GUARDIANSHIPS, AND DURABLE POWERS OF ATTORNEY
FOR PERSONS WITH DISABILITIES OR WHO ARE
INCAPACITATED**

CHAPTER 514

S.B. No. 39

AN ACT

relating to estates and to guardianships, substitutes for guardianships, and durable powers of attorney for persons with disabilities or who are incapacitated.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. (a) Section 361.052, Estates Code, is amended to read as follows:

Sec. 361.052. **REMOVAL WITH NOTICE.** (a) The court may remove a personal representative on the court's own motion, or on the complaint of any interested person, after the representative has been cited by personal service to answer at a time and place set ~~fixed~~ in the notice, if:

(1) sufficient grounds appear to support a belief that the representative has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, all or part of the property entrusted to the representative's care;

(2) the representative fails to return any account required by law to be made;

(3) the representative fails to obey a proper order of the court that has jurisdiction with respect to the performance of the representative's duties;

(4) the representative is proved to have been guilty of gross misconduct, or mismanagement in the performance of the representative's duties;

(5) the representative:

(A) becomes incapacitated;

(B) is sentenced to the penitentiary; or

(C) from any other cause, becomes incapable of properly performing the duties of the representative's trust; or

(6) the representative, as executor or administrator, fails to:

~~[(A)] make a final settlement by the third anniversary of the date letters testamentary or of administration are granted, unless that period is extended by the court on a showing of sufficient cause supported by oath; or~~

~~[(B)] timely file the affidavit or certificate required by Section 308.004].~~

(b) *If a personal representative, as executor or administrator, fails to timely file the affidavit or certificate required by Section 308.004, the court, on the court's own motion, may remove the personal representative after providing 30 days' written notice to the personal representative to answer at a time and place set in the notice, by certified mail, return receipt requested, to:*

(1) the representative's last known address; and

(2) the last known address of the representative's attorney of record.

(b) Section 404.0035, Estates Code, is amended to read as follows:

Sec. 404.0035. **REMOVAL OF INDEPENDENT EXECUTOR WITH NOTICE.**

(a) The probate court, on the court's own motion, may remove an independent executor appointed under this subtitle after providing 30 days' written notice *of the court's intention to the independent executor, requiring answering at a time and place set in the notice* ~~[of the court's intent to remove the independent executor]~~, by certified mail, return receipt requested, to the independent executor's last known address and to the last known address of the independent executor's attorney of record, if the independent executor:

- (1) neglects to qualify in the manner and time required by law; ~~or~~
 - (2) fails to return, before the 91st day after the date the independent executor qualifies, either an inventory of the estate property and a list of claims that have come to the independent executor's knowledge or an affidavit in lieu of the inventory, appraisal, and list of claims, unless that deadline is extended by court order; or
 - (3) *fails to timely file the affidavit or certificate required by Section 308.004.*
- (b) The probate court, on its own motion or on motion of any interested person, after the independent executor has been cited by personal service to answer at a time and place set ~~fixed~~ in the notice, may remove an independent executor when:

- (1) the independent executor fails to make an accounting which is required by law to be made;
- (2) ~~[the independent executor fails to timely file the affidavit or certificate required by Section 308.004;~~
- ~~[(3)]~~ the independent executor is proved to have been guilty of gross misconduct or gross mismanagement in the performance of the independent executor's duties;
- (3) ~~[(4)]~~ the independent executor becomes an incapacitated person, or is sentenced to the penitentiary, or from any other cause becomes legally incapacitated from properly performing the independent executor's fiduciary duties; or
- (4) ~~[(5)]~~ the independent executor becomes incapable of properly performing the independent executor's fiduciary duties due to a material conflict of interest.

(c) Section 1023.003, Estates Code, is amended to read as follows:

Sec. 1023.003. ~~[APPLICATION FOR]~~ TRANSFER OF GUARDIANSHIP TO ANOTHER COUNTY. (a) When a guardian or any other person desires to transfer the transaction of the business of the guardianship from one county to another, the person shall file a written application in the court in which the guardianship is pending stating the reason for the transfer.

(b) *With notice as provided by Section 1023.004, the court in which a guardianship is pending, on the court's own motion, may transfer the transaction of the business of the guardianship to another county if the ward resides in the county to which the guardianship is to be transferred.*

(d) Section 1023.004, Estates Code, is amended to read as follows:

Sec. 1023.004. NOTICE. (a) On filing an application *or on motion of a court* to transfer a guardianship to another county *under Section 1023.003*, the sureties on the bond of the guardian shall be cited by personal service to appear and show cause why the guardianship ~~[application]~~ should not be transferred ~~[granted]~~.

(b) If an application is filed by a person other than the guardian *or if a court made a motion to transfer a guardianship*, the guardian shall be cited by personal service to appear and show cause why the guardianship ~~[application]~~ should not be transferred ~~[granted]~~.

(e) Section 1023.005, Estates Code, is amended to read as follows:

Sec. 1023.005. COURT ACTION. On hearing an application *or motion* under Section 1023.003, if good cause is not shown to deny the transfer ~~[application]~~ and it appears that transfer of the guardianship is in the best interests of the ward, the court shall enter an order:

- (1) authorizing the transfer on payment on behalf of the estate of all accrued costs; and
- (2) requiring that any existing bond of the guardian must remain in effect until a new bond has been given or a rider has been filed in accordance with Section 1023.010.

(f) Section 1203.052, Estates Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The court may remove a guardian *as provided by Subsection (a-1)* ~~[on the court's~~

~~own motion, or on the complaint of an interested person, after the guardian has been cited by personal service to answer at a time and place set in the notice,] if:~~

(1) sufficient grounds appear to support a belief that the guardian has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, any of the property entrusted to the guardian's care;

(2) the guardian fails to return any account or report that is required by law to be made;

(3) the guardian fails to obey a proper order of the court that has jurisdiction with respect to the performance of the guardian's duties;

(4) the guardian is proved to have been guilty of gross misconduct or mismanagement in the performance of the guardian's duties;

(5) the guardian:

(A) becomes incapacitated;

(B) is sentenced to the penitentiary; or

(C) from any other cause, becomes incapable of properly performing the duties of the guardian's trust;

(6) the guardian has engaged in conduct with respect to the ward that would be considered to be abuse, neglect, or exploitation, as those terms are defined by Section 48.002, Human Resources Code, if engaged in with respect to an elderly or disabled person, as defined by that section;

(7) the guardian neglects to educate or maintain the ward as liberally as the means of the ward's estate and the ward's ability or condition permit;

(8) the guardian interferes with the ward's progress or participation in programs in the community;

(9) the guardian fails to comply with the requirements of Subchapter G, Chapter 1104;

(10) the court determines that, because of the dissolution of the joint guardians' marriage, the termination of the guardians' joint appointment and the continuation of only one of the joint guardians as the sole guardian is in the best interest of the ward; or

(11) the guardian would be ineligible for appointment as a guardian under Subchapter H, Chapter 1104.

(a-1) The court may remove a guardian for a reason listed in Subsection (a) on the:

(1) court's own motion, after the guardian has been notified, by certified mail, return receipt requested, to answer at a time and place set in the notice; or

(2) complaint of an interested person, after the guardian has been cited by personal service to answer at a time and place set in the notice.

(g) Sections 361.052 and 404.0035, Estates Code, as amended by this section, apply to the estate of a decedent who dies before, on, or after the effective date of this Act.

(h) Sections 1023.003, 1023.004, 1023.005, and 1203.052, Estates Code, as amended by this section, apply to a guardianship created before, on, or after the effective date of this Act.

SECTION 2. Section 751.052, Estates Code, is amended to read as follows:

Sec. 751.052. RELATION OF ATTORNEY IN FACT OR AGENT TO COURT-APPOINTED GUARDIAN OF ESTATE. (a) If, after execution of a durable power of attorney, a court ~~[of the principal's domicile]~~ appoints a:

(1) permanent guardian of the estate for a ward who is ~~[of]~~ the principal who executed the power of attorney, on the qualification of the guardian the powers and authority granted to ~~[of]~~ the attorney in fact or agent named in the power of attorney are automatically revoked; or

(2) *temporary guardian of the estate for a ward who is the principal who executed the power of attorney, on the qualification of the guardian the powers and authority granted to the attorney in fact or agent named in the power of attorney are automatically suspended for the duration of the guardianship unless the court enters an order that:*

(A) *affirms and states the effectiveness of the power of attorney; and*

(B) *confirms the validity of the appointment of the named attorney in fact or agent* ~~[terminate on the qualification of the guardian of the estate].~~

(b) *If the powers and authority of an [The] attorney in fact or agent are revoked as provided by Subsection (a), the attorney in fact or agent shall:*

(1) *deliver to the guardian of the estate all assets of the ward's estate that are in the possession of the attorney in fact or agent; and*

(2) *account to the guardian of the estate as the attorney in fact or agent would account to the principal if the principal had terminated the powers of the attorney in fact or agent.*

~~[(b) If, after execution of a durable power of attorney, a court of the principal's domicile appoints a temporary guardian of the estate of the principal, the court may suspend the powers of the attorney in fact or agent on the qualification of the temporary guardian of the estate until the date the term of the temporary guardian expires. This subsection may not be construed to prohibit the application for or issuance of a temporary restraining order under applicable law.]~~

SECTION 3. Section 751.054(a), Estates Code, is amended to read as follows:

(a) The revocation by, the death of, or the qualification of a *temporary or permanent* guardian of the estate of a principal who has executed a durable power of attorney *or the removal of an attorney in fact or agent under Chapter 753* does not revoke, suspend, or terminate the agency as to the attorney in fact, agent, or other person who acts in good faith under or in reliance on the power without actual knowledge of the termination *or suspension, as applicable*, of the power by:

(1) the revocation;

(2) the principal's death; ~~[or]~~

(3) the qualification of a *temporary or permanent* guardian of the estate of the principal; *or*

(4) *the attorney in fact's or agent's removal.*

SECTION 4. Section 751.055(a), Estates Code, is amended to read as follows:

(a) As to an act undertaken in good-faith reliance on a durable power of attorney, an affidavit executed by the attorney in fact or agent under the durable power of attorney stating that the attorney in fact or agent did not have, at the time the power was exercised, actual knowledge of the termination *or suspension* of the power, *as applicable*, by revocation, the principal's death, the principal's divorce or the annulment of the principal's marriage if the attorney in fact or agent was the principal's spouse, ~~[or]~~ the qualification of a *temporary or permanent* guardian of the estate of the principal, *or the attorney in fact's or agent's removal*, is conclusive proof as between the attorney in fact or agent and a person other than the principal or the principal's personal representative dealing with the attorney in fact or agent of the nonrevocation, *nonsuspension*, or nontermination of the power at that time.

SECTION 5. Section 752.051, Estates Code, is amended to read as follows:

Sec. 752.051. FORM. The following form is known as a "statutory durable power of attorney":

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY

ACT, SUBTITLE P, TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

You should select someone you trust to serve as your agent (attorney in fact). Unless you specify otherwise, generally the agent's (attorney in fact's) authority will continue until:

- (1) you die or revoke the power of attorney;
- (2) your agent (attorney in fact) resigns, *is removed by court order*, or is unable to act for you; or
- (3) a guardian is appointed for your estate.

I, _____ (insert your name and address), appoint _____ (insert the name and address of the person appointed) as my agent (attorney in fact) to act for me in any lawful way with respect to all of the following powers that I have initialed below.

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS LISTED IN (A) THROUGH (M).

TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

- ___ (A) Real property transactions;
- ___ (B) Tangible personal property transactions;
- ___ (C) Stock and bond transactions;
- ___ (D) Commodity and option transactions;
- ___ (E) Banking and other financial institution transactions;
- ___ (F) Business operating transactions;
- ___ (G) Insurance and annuity transactions;
- ___ (H) Estate, trust, and other beneficiary transactions;
- ___ (I) Claims and litigation;
- ___ (J) Personal and family maintenance;
- ___ (K) Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;
- ___ (L) Retirement plan transactions;
- ___ (M) Tax matters;
- ___ (N) ALL OF THE POWERS LISTED IN (A) THROUGH (M). YOU DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:

Special instructions applicable to gifts (initial in front of the following sentence to have it apply):

___ I grant my agent (attorney in fact) the power to apply my property to make gifts outright to or for the benefit of a person, including by the exercise of a presently exercisable general power of appointment held by me, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

(A) This power of attorney is not affected by my subsequent disability or incapacity.

(B) This power of attorney becomes effective upon my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

If any agent named by me dies, becomes legally disabled, resigns, ~~or~~ refuses to act, or is removed by court order, I name the following (each to act alone and successively, in the order named) as successor(s) to that agent: _____.

Signed this ____ day of _____, _____

(your signature)

State of _____

County of _____

This document was acknowledged before me on _____ (date) by

(name of principal)

(signature of notarial officer)

(Seal, if any, of notary) _____

(printed name)

My commission expires: _____

IMPORTANT INFORMATION FOR AGENT (ATTORNEY IN FACT)

Agent's Duties

When you accept the authority granted under this power of attorney, you establish a "fiduciary" relationship with the principal. This is a special legal relationship that imposes on you legal duties that continue until you resign or the power of attorney is terminated, *suspended*, or revoked by the principal or by operation of law. A fiduciary duty generally includes the duty to:

- (1) act in good faith;
- (2) do nothing beyond the authority granted in this power of attorney;
- (3) act loyally for the principal's benefit;
- (4) avoid conflicts that would impair your ability to act in the principal's best interest; and
- (5) disclose your identity as an agent or attorney in fact when you act for the principal by writing or printing the name of the principal and signing your own name as "agent" or "attorney in fact" in the following manner:

(Principal's Name) by (Your Signature) as Agent (or as Attorney in Fact)

In addition, the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code) requires you to:

- (1) maintain records of each action taken or decision made on behalf of the principal;
- (2) maintain all records until delivered to the principal, released by the principal, or discharged by a court; and
- (3) if requested by the principal, provide an accounting to the principal that, unless otherwise directed by the principal or otherwise provided in the Special Instructions, must include:
 - (A) the property belonging to the principal that has come to your knowledge or into your possession;
 - (B) each action taken or decision made by you as agent or attorney in fact;
 - (C) a complete account of receipts, disbursements, and other actions of you as agent or attorney in fact that includes the source and nature of each receipt, disbursement, or action, with receipts of principal and income shown separately;
 - (D) a listing of all property over which you have exercised control that includes an adequate description of each asset and the asset's current value, if known to you;
 - (E) the cash balance on hand and the name and location of the depository at which the cash balance is kept;
 - (F) each known liability;
 - (G) any other information and facts known to you as necessary for a full and definite understanding of the exact condition of the property belonging to the principal; and
 - (H) all documentation regarding the principal's property.

Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates or *suspends* this power of attorney or your authority under this power of attorney. An event that terminates this power of attorney or your authority to act under this power of attorney includes:

- (1) the principal's death;
- (2) the principal's revocation of this power of attorney or your authority;
- (3) the occurrence of a termination event stated in this power of attorney;
- (4) if you are married to the principal, the dissolution of your marriage by court decree of divorce or annulment;
- (5) the appointment and qualification of a permanent guardian of the principal's estate *unless a court order provides otherwise*; or
- (6) *if ordered by a court, your removal as agent (attorney in fact) under this power of attorney. An event that suspends this power of attorney or your authority to act under this power of attorney is the appointment and qualification of a temporary guardian unless a court order provides otherwise [if ordered by a court, the suspension of this power of attorney on the appointment and qualification of a temporary guardian until the date the term of the temporary guardian expires].*

Liability of Agent

The authority granted to you under this power of attorney is specified in the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code). If you violate the Durable Power of Attorney Act or act beyond the authority granted, you may be liable for any damages caused by the violation or subject to prosecution for misapplication of property by a fiduciary under Chapter 32 of the Texas Penal Code.

THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

SECTION 6. Subtitle P, Title 2, Estates Code, is amended by adding Chapter 753 to read as follows:

CHAPTER 753. REMOVAL OF ATTORNEY IN FACT OR AGENT

Sec. 753.001. PROCEDURE FOR REMOVAL. (a) In this section, "person interested," notwithstanding Section 22.018, has the meaning assigned by Section 1002.018.

(b) The following persons may file a petition under this section:

(1) any person named as a successor attorney in fact or agent in a durable power of attorney; or

(2) if the person with respect to whom a guardianship proceeding has been commenced is a principal who has executed a durable power of attorney, any person interested in the guardianship proceeding, including an attorney ad litem or guardian ad litem.

(c) On the petition of a person described by Subsection (b), a probate court, after a hearing, may enter an order:

(1) removing a person named and serving as an attorney in fact or agent under a durable power of attorney;

(2) authorizing the appointment of a successor attorney in fact or agent who is named in the durable power of attorney if the court finds that the successor attorney in fact or agent is willing to accept the authority granted under the power of attorney; and

(3) if compensation is allowed by the terms of the durable power of attorney, denying all or part of the removed attorney in fact's or agent's compensation.

(d) A court may enter an order under Subsection (c) if the court finds:

(1) that the attorney in fact or agent has breached the attorney in fact's or agent's fiduciary duties to the principal;

(2) that the attorney in fact or agent has materially violated or attempted to violate the terms of the durable power of attorney and the violation or attempted violation results in a material financial loss to the principal;

(3) that the attorney in fact or agent is incapacitated or is otherwise incapable of properly performing the attorney in fact's or agent's duties; or

(4) *that the attorney in fact or agent has failed to make an accounting:*

(A) *that is required by Section 751.104 within the period prescribed by Section 751.105, by other law, or by the terms of the durable power of attorney; or*

(B) *as ordered by the court.*

Sec. 753.002. *NOTICE TO THIRD PARTIES. Not later than the 21st day after the date the court enters an order removing an attorney in fact or agent and authorizing the appointment of a successor under Section 753.001, the successor attorney in fact or agent shall provide actual notice of the order to each third party that the attorney in fact or agent has reason to believe relied on or may rely on the durable power of attorney.*

SECTION 7. Section 1055.003, Estates Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) *Notwithstanding the Texas Rules of Civil Procedure and except as provided by Subsection (d), an interested person may intervene in a guardianship proceeding only by filing a timely motion to intervene that is served on the parties.*

(d) *A person who is entitled to receive notice under Section 1051.104 is not required to file a motion under this section to intervene in a guardianship proceeding.*

SECTION 8. Section 1101.002, Estates Code, is amended to read as follows:

Sec. 1101.002. *CONTENTS OF APPLICATION; CONFIDENTIALITY OF CERTAIN ADDRESSES. An application filed under Section 1101.001 may omit the address of a person named in the application if:*

(1) *the application states that the person is or was protected by a protective order issued under Chapter 85, Family Code;*

(2) *a copy of the protective order is attached to the application as an exhibit;*

(3) *the application states the county in which the person resides;*

(4) *the application indicates the place where notice to or the issuance and service of citation on the person may be made or sent; and*

(5) *the application is accompanied by a request for an order under Section 1051.201 specifying the manner of issuance, service, and return of citation or notice on the person.*

SECTION 9. Section 1151.051(d), Estates Code, is amended to read as follows:

(d) *Notwithstanding Subsection (c)(4), a guardian of the person of a ward has the power to personally transport the ward or to direct the ward's transport by emergency medical services or other means to an inpatient mental health facility for a preliminary examination in accordance with Subchapters A and C, Chapter 573, Health and Safety Code. The guardian shall immediately provide written notice to the court that granted the guardianship as required by Section 573.004, Health and Safety Code, of the filing of an application under that section.*

SECTION 10. Section 1357.052, Estates Code, is amended to read as follows:

Sec. 1357.052. *AUTHORITY OF SUPPORTER; NATURE OF RELATIONSHIP. (a) A supporter may exercise the authority granted to the supporter in the supported decision-making agreement.*

(b) *The supporter owes to the adult with a disability fiduciary duties as listed in the form provided by Section 1357.056(a), regardless of whether that form is used for the supported decision-making agreement.*

(c) *The relationship between an adult with a disability and the supporter with whom the adult enters into a supported decision-making agreement:*

(1) *is one of trust and confidence; and*

(2) *does not undermine the decision-making authority of the adult.*

SECTION 11. Subchapter B, Chapter 1357, Estates Code, is amended by adding Section 1357.0525 to read as follows:

Sec. 1357.0525. DESIGNATION OF ALTERNATE SUPPORTER IN CERTAIN CIRCUMSTANCES. In order to prevent a conflict of interest, if a determination is made by an adult with a disability that the supporter with whom the adult entered into a supported decision-making agreement is the most appropriate person to provide to the adult supports and services for which the supporter will be compensated, the adult may amend the supported decision-making agreement to designate an alternate person to act as the adult's supporter for the limited purpose of participating in person-centered planning as it relates to the provision of those supports and services.

SECTION 12. Section 1357.053(b), Estates Code, is amended to read as follows:

(b) The supported decision-making agreement is terminated if:

(1) the Department of Family and Protective Services finds that the adult with a disability has been abused, neglected, or exploited by the supporter; ~~or~~

(2) the supporter is found criminally liable for conduct described by Subdivision (1);
or

(3) a temporary or permanent guardian of the person or estate appointed for the adult with a disability qualifies.

SECTION 13. Section 1357.056(a), Estates Code, is amended to read as follows:

(a) Subject to Subsection (b), a supported decision-making agreement is valid only if it is in substantially the following form:

SUPPORTED DECISION-MAKING AGREEMENT

Important Information For Supporter: Duties

When you agree to provide support to an adult with a disability under this supported decision-making agreement, you have a duty to:

- (1) act in good faith;*
- (2) act within the authority granted in this agreement;*
- (3) act loyally and without self-interest; and*
- (4) avoid conflicts of interest.*

Appointment of Supporter

I, (insert your name), make this agreement of my own free will.

I agree and designate that: _____

Name: _____

Address: _____

Phone Number: _____

E-mail Address: _____

is my supporter. My supporter may help me with making everyday life decisions relating to the following:

- Y/N obtaining food, clothing, and shelter
Y/N taking care of my physical health
Y/N managing my financial affairs.

My supporter is not allowed to make decisions for me. To help me with my decisions, my supporter may:

1. Help me access, collect, or obtain information that is relevant to a decision, including medical, psychological, financial, educational, or treatment records;
2. Help me understand my options so I can make an informed decision; or

3. Help me communicate my decision to appropriate persons.

Y/N A release allowing my supporter to see protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) is attached.

Y/N A release allowing my supporter to see educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) is attached.

Effective Date of Supported Decision-Making Agreement

This supported decision-making agreement is effective immediately and will continue until (insert date) or until the agreement is terminated by my supporter or me or by operation of law.

Signed this ____ day of ____, 20__

Consent of Supporter

I, (name of supporter), consent to act as a supporter under this agreement.

(signature of supporter)

(printed name of supporter)

Signature

(my signature)

(my printed name)

(witness 1 signature)

(printed name of witness 1)

(witness 2 signature)

(printed name of witness 2)

State of _____

County of _____

This document was acknowledged before me on _____ (date)
by _____ and _____
(name of adult with a disability) (name of supporter)

(signature of notarial officer)

(Seal, if any, of notary) _____

(printed name)

My commission expires: _____

WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY

IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE ADULT WITH A DISABILITY IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY THE SUPPORTER, THE PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT, OR EXPLOITATION TO THE DEPARTMENT OF FAMILY AND PROTECTIVE

SERVICES BY CALLING THE ABUSE HOTLINE AT 1-800-252-5400 OR ONLINE AT WWW.TXABUSEHOTLINE.ORG.

SECTION 14. (a) Sections 751.052, 751.054(a), and 751.055(a), Estates Code, as amended by this Act, and Chapter 753, Estates Code, as added by this Act, apply to a durable power of attorney, including a statutory durable power of attorney, executed before, on, or after the effective date of this Act.

(b) Section 752.051, Estates Code, as amended by this Act, applies to a statutory durable power of attorney executed on or after the effective date of this Act. A statutory durable power of attorney executed before the effective date of this Act is governed by the law as it existed on the date the statutory durable power of attorney was executed, and the former law is continued in effect for that purpose.

(c) Section 1055.003, Estates Code, as amended by this Act, applies to a guardianship proceeding that is pending or commenced on or after the effective date of this Act.

(d) Section 1101.002, Estates Code, as amended by this Act, applies to an application for a guardianship filed on or after the effective date of this Act.

(e) Sections 1357.052 and 1357.053(b), Estates Code, as amended by this Act, and Section 1357.0525, Estates Code, as added by this Act, apply to a supported decision-making agreement entered into before, on, or after the effective date of this Act.

(f) Section 1357.056(a), Estates Code, as amended by this Act, applies to a supported decision-making agreement entered into on or after the effective date of this Act. A supported decision-making agreement entered into before the effective date of this Act is governed by the law as it existed on the date the supported decision-making agreement was entered into, and the former law is continued in effect for that purpose.

SECTION 15. This Act takes effect September 1, 2017.

Passed the Senate on April 5, 2017: Yeas 30, Nays 0; the Senate concurred in House amendment on May 25, 2017: Yeas 31, Nays 0; passed the House, with amendment, on May 22, 2017: Yeas 144, Nays 0, two present not voting.

Approved June 9, 2017.

Effective September 1, 2017.

BOND REQUIRED AND THE BOND INSURANCE OBTAINED FOR CERTAIN JUDGES

CHAPTER 515

S.B. No. 40

AN ACT

relating to the bond required and the bond insurance obtained for certain judges.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 25.0006, Government Code, is amended by amending Subsection (a) and adding Subsections (a-1), (a-2), (a-3), and (a-4) to read as follows:

(a) *Notwithstanding any other law except Subsection (a-4), Subsections (a-1), (a-2), and (a-3) control over a specific provision for a particular court or county that attempts to create a requirement for a bond or insurance that conflicts with those subsections.*

(a-1) *Before beginning the duties of the office, the [The] judge of a statutory county court must execute a bond that:*

(1) *is payable to the treasurer of the county;*

(2) *is in the amount set by the commissioners court of:*

(A) *subject to Paragraph (B), not less than \$1,000 nor more than \$10,000; or*